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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 020 50881 Office: VERMONT SERVICE CENTER Date: NOV 07 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner states that he seeks a position in research and development, analysis or manufacturing. At the time he filed the petition, the petitioner was a postdoctoral researcher at [redacted]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner states that his expertise is in "Mechanistic, Synthetic, and Analytical Organic Chemistry." The petitioner explains why he believes he qualifies for a national interest waiver:

> I have been working at [redacted], Marlborough, MA since January 2002 on a next generation lithography project funded by US Department of [Defense] Advanced Research Projects Administration (DARPA). . . .
>
> I also believe that I have made a significant contribution not only to the institutes I worked for, but also to the advancement of science and technology. . . .
>
> Based on my academic background I believe that I am in a very strong position to pursue a career in an industry or a research institute in US. In fact all of my US employers have indicated the willingness to hire me permanently. I see a future for me in a high tech industry such as my present company or in a research program aimed at the utilization of bio-based resources depending on the future direction of US economy.

In his personal statement, the petitioner identifies his general areas of expertise, but does not specify any particular achievements that would distinguish him from his peers.

The petitioner submits several letters, all from individuals who have taught, supervised, or employed the petitioner. The witnesses contend that the petitioner is a highly skilled researcher, but many of the letters contain little or no information about what, exactly, the petitioner has done. Other witnesses offer at least a

general picture of the petitioner's research activities. The most detailed description of the petitioner's past work is in a letter from [redacted], senior staff scientist and technical group manager at the [redacted], Richland, Washington. [redacted] states:

> [The petitioner's] efforts resulted in U.S. patents and commercial developments in the production of olefins from natural gas and other precursors. . . .
>
> While at PNNL, [the petitioner] played a key role in a program . . . [that] investigated a process for the conversion of methane or natural gas into ethylene. . . . [The petitioner's] role was to develop and to present the technology to key industry (Exxon) and PNNL management. He was a critical member of the team, directing postdoctoral researchers, designing technical directions of the program, and producing a product for presentation to Exxon and PNNL management.
>
> The second important contribution involving commercial clients . . . resulted in a new technology to convert oil and natural biomass-derived materials and plastics directly to olefins. [The petitioner] filled a key role of developing the technology in a form leading to potential commercial applications, and making possible presentation of the technical/ commercial accomplishments before PNNL management and potential commercial partners for commercial evaluation. . . .
>
> [The petitioner] has carried out research in the area of kinetics of reactions of microwave-produced atoms with organic substrates, microwave-activated catalysis of olefin production from organic substrates, and kinetics of lignin-related organic free radicals. He has extensive experience in organic mechanisms, kinetics of reactive intermediates, and has the potential of developing programs in reactive intermediates . . . in *biological* systems.

[redacted], a research chemist at [redacted], states:

> I manage [redacted] Next Generation Lithography Group within our Microelectronics Chemicals Research Department, which is developing advanced photoresists for future generations of electronic devices. . . .
>
> [The petitioner] is a post-doctoral researcher currently responsible for inventing, developing and characterizing electron beam photoresists. The lithographic expertise and deep chemical understanding that he is developing will be highly valuable when he seeks permanent employment.

The petitioner and some witnesses contend that the petitioner's published work has earned him international recognition. The petitioner documents a total of 22 citations of eight articles. Eight of these citations are self-citations by the petitioner and/or his co-authors, leaving 14 independent citations, for an average of less than two independent citations per article.

The director denied the petition, stating that the petitioner has "helped move the theory forward" in an important area of scientific research, but that the petitioner has not shown that his "work has already had a national or far reaching impact." The director stated that subjective claims that the petitioner's work has the potential to have greater impact do not justify approval of the waiver request. The director determined that the petitioner had not established that his entry would serve the national interest to such an extent that it would outweigh the national interest inherent in the job offer/labor certification requirement that typically applies to the immigrant visa classification that the petitioner has chosen to seek.

On appeal, the petitioner asserts: "my research activities have already made significant contributions to the advancement of science and technology." The petitioner lists various projects he has undertaken, and indicates that he has left Shipley Company and begun working for Promerus LLC in Brecksville, Ohio. Simply listing these projects does not self-evidently establish that they are especially important within the field, or that the petitioner's contributions to those projects have been at a level that demonstrates eligibility for the waiver.

The petitioner states:

> I prefer to secure my permanent residency through a national interest waiver rather than the normal labor certification and job offer processes. I believe that I possess a wide range of unique skills and expertise that would be beneficial to [the] US economy and the advancement of science and technology. The normal job offer process would limit my contributions to a particular employer for several years. In a rapidly changing global economy in which the priorities of US economic directions are also fluid, I believe my talents could not be fully utilized if my options were narrowed.

While the petitioner's preference is noted, the deciding factor is the national interest, rather than the personal preference of the alien seeking benefits. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Matter of New York State Dept. of Transportation* at 223.

Furthermore, pursuant to section 204(j) of the Act, 8 U.S.C. § 1154(j), an alien with a labor certification is restricted from changing jobs only during the first 180 days that his or her adjustment application is pending after the approval of the immigrant visa petition. An alien with a labor certification does not, by any means, face permanent obstacles to changing jobs.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.